

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3249 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOLI GUGA TALSHI

Versus

DISTRICT MAGISTRATE

Appearance:

MR KANUBHAI I PATEL for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/07/96

ORAL JUDGEMENT

The petitioner Koli Guga Talshi in this petition under Aritcle 226 of the Constitution of India, has challenged the legality and validity of the order of his detention dated 13.12.1995 passed under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafte referred to as 'the PASA Act') by the District Magistrate, Surendranagar (hereinafter referred to as the 'detaining authority')

Considering the criminal cases filed against the detenu and the statements of 17 witnesses, wherein they have alleged about the anti social and nefarious activities of the detenu, the detaining authority has recorded a finding that the detenu is a dangerous person within the meaning of section 2(c) of the PASA Act and, with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed which is under challenged in the present petition.

Mr KI Patel learned advocate appearing for the petitioner challenged the order of detention by contending that the detaining authority has taken into consideration the extreneous facts namely number of stale cases wherein the detenu was ordered to be acquitted. Mr. Patel therefore, submitted that the order of detention is required to be quashed and set aside only on this ground. I find considerable substance in the submission of Mr. Patel. As can be seen from the grounds of detention supplied to the detenu, the detaining authority in para-1 of the said grounds has stated that two criminal cases namely CR NO. 59/95 and CR No. 100/95 have been registered at Zinzuwada Police Station on 4.7.1995 and 1-.12.1995, the former is pending trial while the later is at the investigation stage. In para-2 of the grounds of detention , the detaining authority has stated that one prohibition offence is registered at Zinzuwada police station vide CR No. 10/95 on 5.7.1995, is also pending trial. Surprisingly, in para-7, the detaining authority has considered CR NO. 24/90 for the offence under section 323, 336,426,504, 506(2) and 114 of IPC, wherein undisputedly the detenu is acquitted on 30.9.1994. One more case is considered being CR No. 47/90 for the breach of section 161 of the Gujarat PanchayatAct, which was settled in the Lok Adalat. The detaining authority has stated that as the detenu has admitted the guilt, he was repremanded on 25.12.1992. The detaining authority has also placed reliance on the CR NO. 75/95, 84/95, 85/95 and 86/95 wherein undisputedly the petitioner is not shown as an accused. Finally , the detaining authority has also relied on the offence registered at Cr No. 63/95 under section 107 of Cr.P.C., wherein the detenu was required to execute the bail bond for the good behaviour. In view of this material, the detaining authority has specifically recorded a finding that the detenu is a dangerous person and with a view to maintain public order, the detention of the detenu is necessary. Having

considered the overall view of the matter, I feel that the detaining authority is not entitled to take into consideration the offence registered under the Gujarat Panchayat Act and, under section 107 of Cr.P.C. For branding a person as a dangerous person under sub section (c) of Section 2 of the PASA Act requires that the offence should be under Chapters 16 and 17 of the IPC and under the provisions of Arms Act. The fact that the detaining authority has placed reliance on CR No. 75/90, 84/95, 85/95 and 86/95 wherein undisputedly the detenu is not an accused, how the said fact can be taken into consideration in passing the order of detention? In the similar way, where the detenu has been acquitted in the offence registered against him vide CR No. 74/90 by the competent court. It is too much for the detaining authority to pass comments against the judgment of the competent court by stating that as the witnesses out of fear of the detenu has not supported and, therefor, the charge was not proved. The detaining authority in the capacity as a District Magistrate ought not to have taken into consideration the extreneous facts and had restrained itself from commenting the judgment passed by the competent court. Reading the grounds of detention as a whole, the only conclusion which can be drawn is that the detaining authority has in clear non application of mind without knowing the requirements of the relevant provisions of the PASA Act and in a highly mechanical way, passed the order of detention which cannot stand even for a minute.

In the result, this petition is allowed. The impugned order of detention dated 13.12.1995 is quashed and set aside. The detenu- Koli Guga Talshi is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute with no order as to costs.
